

An educational day care center operated in conjunction with an industrial company that enrolls children on a basis of family financial need and the child's needs for the care and development program of the center is exempt under section 501(c)(3) of the Code.

Advice has been requested whether the nonprofit organization described below qualifies for exemption from Federal income tax under section 501(c)(3) of the Internal Revenue Code of 1954.

The organization was formed to operate a work-related child care and development center. The center operates in conjunction with an industrial company to provide pre-school age children of factory workers with an educational program and care during the work day. The center is situated adjacent to the company premises, which is located in an industrial area. Several times during the working day the parents actively participate in the center's program. As part of the program the children are taken on tours through the company. The center is primarily financed by Federal grants and contributions of cash and services from the company.

The center enrolls pre-school age children of employees of the company, children of parents employed in nearby factories, and children of parents recommended through contacts with antipoverty and welfare agencies. Employment with the company does not give any employee the right to have his child enrolled at the center. Children are selected on the basis of the financial need of the family and the need of a child for the care and development program. The parents of enrolled children automatically become members of the center. The members fully control the policies and workings of the center.

The center maintains a professional staff of qualified teachers experienced in the education of pre-school age children. The center's program includes teaching the children proper hygiene. A registered nurse from the company and a medical aide are available to care for the medical needs of the children. The children receive 70 percent of their daily nutritional requirements at the center.

Section 501(c)(3) of the Code provides for the exemption from Federal income tax of organizations organized and operated exclusively for charitable or educational purposes.

Section 1.501(c)(3)-1(d)(1)(ii) of the Income Tax Regulations provides that an organization is not organized or operated exclusively for one or more exempt purposes unless it serves a public rather than a private interest.

Section 1.501(c)(3)-1(d)(2) of the regulations provides that the term 'charitable' is used in section 501(c)(3) in its

generally accepted legal sense and includes, among other things, relief of the poor and distressed or of the underprivileged, and the advancement of education.

To the extent that enrollment in the center is based upon the financial need of the family and the need of the child for the program, the organization is performing a charitable activity. See Revenue Ruling, 68-166, C.B. 1968-1, 255, which holds an organization exempt under section 501(c)(3) of the Code where it operates a day care center for young children of needy working parents. By providing pre-school age children of working parents with an educational program in an industrial-related environment and by providing care for the children, the organization is advancing education.

Since the organization is primarily funded by Federal grants, is open to members of the community rather than restricted to employees of the company, and children are selected on the basis of objective criteria, any private benefits derived by the company or the parents of enrolled children is incidental to the public benefits resulting from the organization's operations. See Revenue Ruling 70-186, C.B. 1970-1, 128, which relates to an organization exempt under section 501(c)(3) of the Code organized and operated to maintain and improve a lake as a public recreational facility. In that ruling, the private benefits derived by lake front property owners were found not to lessen the primary public benefits flowing from the organization's operations.

Accordingly, it is held that this organization's is exemption from Federal income tax under section 501(c)(3) of the Code.

Even though an organization considers itself within the scope of this Revenue Ruling, it must file an application on Form 1023, Exemption Application, in order to be recognized by the Service as exempt under section 501(c)(3) of the Code. The application should be filed with the District Director of Internal Revenue for the district in which is located the principal place of business or principal office of the organization. See section 1.501(a)-1 of the regulations.